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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
SOUTHERN DIVISION

15 ESSOCIATE, INC., a Delaware
16 corporation,

17 Plaintiff,

18 v.

19 VOOM MEDIA CORP., an Ontario
20 corporation, d/b/a Mundo Media,

21 Defendant.
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Case No. 12-cv-02156-JVS (JPRx)

**PLAINTIFF ESSOCIATE,
INC.'S SUPPLEMENTAL
MEMORANDUM RE SERVICE
OF PROCESS ON DEFENDANT
VOOM MEDIA CORP.**

Judge: Hon. James. V. Selna

1 On April 3, 2013, Plaintiff Essociate, Inc. filed a memorandum regarding its
2 basis for claiming proper service of process on Defendant Voom Media Corp
3 pursuant to the Court's March 27, 2013 Order Re Application for Entry of Default
4 (*See* Dkt. Nos. 16, 17). In Footnote 3 of its April 3 memorandum (Dkt. No. 17),
5 Essociate noted that Voom's executive assistant, Sandra Malakpour, did not deny
6 in her declaration that she is Voom's "agent." But the other declaration Voom filed
7 does deny that Ms. Malakpour is Voom's agent. Essociate respectfully submits this
8 supplemental memorandum to bring that to the Court's attention and address it.

9 As further discussed in Essociate's April 3 memorandum, Essociate claims
10 that it properly served Voom under Rule 4 by serving Voom under Canadian law
11 as permitted by the Hague Convention on the Service Abroad of Judicial and
12 Extrajudicial Papers and Rule 4(f). (*See* Dkt. No. 17). The Ontario Rules of Civil
13 Procedure permit service on a corporation by, among other ways, "leaving a copy
14 [of the summons and complaint] with ... an agent of the corporation." Ont. R. Civ.
15 P. 16.02(1)(c). Essociate's process server's affidavit of service states that he left a
16 copy of the summons and complaint with a receptionist at Voom's place of
17 business who stated to him that she was authorized to accept service. (Affidavit of
18 Service (Dkt. No. 7))

19 Essociate's April 3 memorandum (Dkt. No. 17 at 4, n. 3) notes that Voom
20 filed a declaration by that receptionist, Sandra Malakpour, stating that she is an
21 "executive assistant" of Voom and that she met Essociate's process server at
22 Voom's place of business. (Declaration of Sandra Malakpour (Dkt. No. 13) at 1)
23 Essociate further noted that Ms. Malakpour did not deny that she is an "agent" of
24 Voom. (Dkt. No. 17 at 4, n. 3)

25 Essociate notes that the other declaration filed by Voom, by its Secretary and
26 Chief Operating Officer Angelo Pollastrone, does expressly deny that Ms.
27 Malakpour is an "agent" of Voom. (Declaration of Angelo Pollastrone (Dkt. No.
28 14) at ¶ 4) Mr. Pollastrone states that Ms. Malakpour is an "administrative

assistant” of Voom and that “Ms. Malakpour is not an officer, director or agent of Voom, is not in control or management of Voom, and is not authorized to accept service of process.” (*Id.* at ¶ 4)

Associate respectfully submits that the Court should not consider Mr. Pollastrone’s conclusory and self-serving statement, especially since it merely tracks the language of Ont. R. Civ. P.16.02(c)(1) and provides no explanation as to how Ms. Malakpour could be an employee of Voom yet not an “agent.” Moreover, his conclusion that Ms. Malakpour “is not in control or management of Voom” is irrelevant because the other basis for Associate’s valid service of process under the Ontario Rules of Civil Procedure is that Ms. Malakpour is “a person at any place of business of the corporation who **appears to be** in control or management of the place of business.” Ont. R. Civ. P. 16.02(1)(c) (emphasis added).

Dated this 11th day of April, 2013.

Respectfully Submitted,

NEWMAN DU WORS LLP,

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